

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

In re: David Fleming,
Debtor.

Chapter 13
Case No. 12-72971

DAVID FLEMING,
c/o Steve C. Taylor, Esq.
133 Mount Pleasant Road
Chesapeake, VA 23322.
Plaintiff.

v.

Adversarial No.: _____

THE NEW YORK BANK OF MELLON
and
SAMUEL I. WHITE PC, AS TRUSTEE

COMPLAINT TO DETERMINE EXTENT AND VALIDITY OF LIEN

NOW COMES the debtor, David Fleming, by counsel, seeking a determination as to the valuation of his real property pursuant to 11 U.S.C. Section 522 and 11 U.S.C. Section 506(d), and F.R.B.P. 7001(2) and respectfully represents:

1. On July 12, 2012 the debtor filed a voluntary petition for relief under Chapter 13 of the Title 11 of the United States Code.
2. That Michael P. Cotter was appointed to serve as Trustee in this case.
3. That the debtor seeks a determination of the value of his residential real property located at 3466 Eight Star Way, Chesapeake, Virginia, and a determination of the extent and validity of two (2) Deeds of Trust on said property and that an Order be entered avoiding one (1) Deed of Trust as being unsecured.
4. That the aforesaid real property is further described as:

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validity of two (2) Deeds of Trust on said property and that an Order be entered avoiding one (1) Deed of Trust as being unsecured.

4. That the aforesaid real property is further described as:

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING, AND BEING IN THE CITY OF CHESAPEAKE, VIRGINIA AND BEING KNOWN, NUMBERED AND DESIGNATED AS LOT 31, AS SHOWN ON THAT CERTAIN PLAT ENTITLED, "SUBDIVISION OF OLDE MILL RUN PHASE ONE SECTION 2 REF: M.B. 143-PG 24, 24A DEEP CREEK BOROUGH CHESAPEAKE, VIRGINIA" DATED JANUARY 30, 2004, MADE BY HASSELL & FOLKES, P.C., ENGINEERS-SURVEYORS-PLANNERS, AND DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE, VIRGINIA IN MAP BOOK 147, AT PAGES 6, 6A-6G.

IT BEING THE SAME PROPERTY CONVEYED TO HEARNDON OLDEMILL BUILDING, LLC, A VIRGINIA LIMITED LIABILITY COMPANY BY DEED DATED FEBRUARY 17, 2005 DULY RECORDED IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE, VIRGINIA IN DEED BOOK 5889, AT PAGE 562.

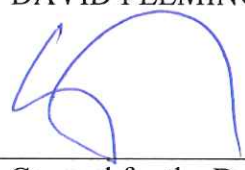
5. That said property is encumber by a first (1st) Deed of Trust in favor of Bank of America in the original amount of three-hundred thirty-six thousand seven-hundred dollars and zero cents (\$336,700.00) recorded in the Circuit Court Clerk's Office of Chesapeake, Virginia on October 13, 2005 as instrument number 050057072 and a second (2nd) Deed of Trust in favor of The New York Bank of Mellon (NYBM) in the original amount of seventy thousand dollars and zero cents (\$70,000.00) recorded in the Circuit Court Clerk's Office of Chesapeake on December 12, 2006 as instrument number 260080367.
6. That said amount claimed by Bank of America for the first (1st) Deed of Trust due and owing from the debtor is approximately three-hundred fifty-seven thousand seven-hundred fifty-five dollars and zero cents (\$357,755.00).
7. That said amount claimed by NYBM for the second (2nd) Deed of Trust due and owing from the debtor is approximately seventy-six thousand two-hundred twenty-eight dollars and seventy-six cents (\$76,228.76).
8. That the fair market value of the aforesaid property at the time of filing was two-hundred ninety-nine thousand dollars and zero cents (\$299,000.00) and a copy of the Appraisal of Real Property is attached as Exhibit A and made part of this Complaint.

9. That the amount claimed and owed on the first (1st) mortgage holder Bank of America of three-hundred fifty-seven thousand seven-hundred fifty-five dollars and zero cents (\$357,755.00) is more than the fair market value of the property and therefore defendant's, NYBM, second (2nd) Deed of Trust lien is unsecured.

WHEREFORE the debtor prays that this Court determine that pursuant to 11 U.S.C. §506 that Bank of America has a secured claim in the approximate amount of three-hundred fifty-seven thousand seven-hundred fifty-five dollars and zero cents (\$357,755.00) for the first (1st) Deed of Trust lien and that said second (2nd) Deed of Trust lien in favor of NYBM secured by instrument number 260080367 in the approximate amount of seventy-six thousand two-hundred twenty-eight dollars and seventy-six cents (\$76,228.76) is unsecured and should be avoided accordingly and for such other and further relief as the nature of the debtor's case may require.

Respectfully submitted,
DAVID FLEMING

By: _____


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